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State Water Resources Control Board

Division of Water Rights

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Edmund G. Brown Jr.
Governor

PROPOSED MITIGATED NEGATIVE DECLARATION Pursuant to Section 21080(c) **Public Resources Code**

To: Office of Planning & Research State Clearinghouse P.O. Box 3044 Sacramento, CA 95812-3044	From: State Water Resources Control Board Division of Water Rights P.O. Box 2000 Sacramento, CA 95812-2000
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PROJECT TITLE: Narsai M. David Applications 29686 and 29687 to Appropriate Water

APPLICANT: Narsai M. David
1889 W. Zinfandel Lane
St. Helena, CA 94574

PROJECT LOCATION:

The Narsai M. David (Applicant) project is located in Pope Valley, California, in Napa County within the U.S. Geological Survey (USGS) 7.5-minute Aetna Springs Quadrangle Township 9N, Range 5W, Sections 11 and 14. The site covers approximately 56 acres along Pope Canyon Road and is located within the Putah Creek watershed above Lake Berryessa.

PROJECT DESCRIPTION:

Applications 29686 and 29687 were filed in 1990, seeking appropriate permits for diversion to storage of 98 acre-feet per annum (afa) (Application 29687), and direct diversion of an additional 49 afa for irrigation of a proposed 80-acre vineyard (Application 29686). Revised applications were submitted to the Division of Water Rights on November 24, 2003, which reduced the place of use (POU) to 50 acres and the total diversion under both applications to 113 afa. On August 2, 2007, the Applicant requested that the diversion rate be reduced from 3 cubic feet per second (cfs) to 2 cfs.

Application 29686 seeks the right to divert 26 af from Pope Creek between March 15 and May 15 for frost protection. Application 29687 seeks the right to divert up to 87 afa from Pope Creek to offstream storage between November 1 and May 15 for irrigation and heat protection of the proposed 50-acre vineyard.

DETERMINATION:

The State Water Resources Control Board (State Water Board) has determined that the above-described project will have a less-than-significant effect on the environment for the reasons specified in the Initial Study prepared for this project.

PERMIT TERMS:

Mitigation measures have been incorporated into the project to avoid potential significant environmental impacts. Specific terms reflecting the mitigation measures, written substantially as follows, will be included in any permits, licenses, or orders issued by the State Water Board.

1. Permittee shall submit a detailed Dust Control and Mitigation Plan for review and approval by the Bay Area Air Quality Management District (BAAQMD). Prior to the start of construction or diversion or use of water under this permit or license, Permittee shall submit documentation to the Deputy Director for Water Rights showing that the BAAQMD has approved the Permittee's Dust Control and Mitigation Plan.
2. Permittee shall be responsible for complying with all applicable regulations from the Napa County Agricultural Commissioner's Office for the use of soil stabilizers, pesticides, herbicides, and regulated chemicals within the place of use.
3. Prior to the start of construction, or diversion or use of water under this permit, Permittee shall obtain the appropriate permit from the U.S. Army Corps of Engineers (USACE) and file a copy with the Division of Water Rights. If a permit from the USACE is not necessary for this permitted project, Permittee shall provide the Division of Water Rights with a letter from the USACE affirming that a permit is not needed.
4. This permit does not authorize any act which results in the taking of a threatened or endangered species or any act which is now prohibited, or becomes prohibited in the future, under either the California Endangered Species Act (Fish and Game Code sections 2050 to 2097) or the federal Endangered Species Act (16 U.S.C.A. sections 1531 to 1544). If a "take" will result from any act authorized under this water right, the permittee shall obtain authorization for an incidental take prior to construction or operation of the project. Permittee shall be responsible for meeting all requirements of the applicable Endangered Species Act for the project authorized under this permit.
5. A biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall be present during any construction work within the stream channel to ensure that no take of foothill yellow-legged frog (*Rana boylei*) occurs. If foothill yellow-legged frogs are encountered during construction, Permittee shall cease construction and ground disturbing activities in areas within 250 feet of the location where foothill yellow-legged frogs are present and shall contact the California Department of Fish and Game (CDFG). Prior to restarting construction activities, Permittee shall submit to the Deputy Director for Water Rights evidence of CDFG approval to continue construction.
6. If ground-disturbing activities such as trenching or ripping are to occur in the place of use, a qualified biologist acceptable by the Deputy Director for Water Rights shall conduct a burrowing owl (*Athene cunicularia*) burrow survey 90 days prior to the ground-disturbing activity at the place of use. The biologist shall submit a survey protocol to be approved by the Deputy Director for Water Rights prior to conducting the burrowing owl/burrow survey. If burrowing owls or suitable habitat/nesting burrows are detected, the results of the survey shall be provided to the California Department of Fish

and Game (CDFG) and Deputy Director for Water Rights and the biologist shall develop a CDFG approved mitigation/conservation plan 30 days prior to any ground-disturbing activities in the place of use. The survey report shall include a map indicating the locations of any burrowing owl(s) or owl sign. If no burrowing owls or suitable habitat/nest burrows are found, the biologist shall submit a report of the finding to the Deputy Director for Water Rights and no burrowing owl conservation measures will be required.

7. Before the initiation of any ground-disturbing or vegetation-clearing activities, Permittee shall retain a qualified botanist, acceptable to the Deputy Director for Water Rights, to conduct a survey for special-status plant species with the potential to occur within the place of use. The botanist shall conduct the survey at the appropriate time of year when the species would be in flower and therefore clearly identifiable. Based on the blooming periods for the species with potential to occur in the place of use, an early blooming-period survey in late March to early April and a late blooming-period survey in late May to June would be appropriate to target all seven special-status plant species. The botanist shall perform an updated California Natural Diversity Database query for special-status plant species prior to the survey. Because potential direct impacts to special-status plants are only associated with construction of the proposed bridge crossing, reservoir, installation of the irrigation system, and planting of vineyards, the survey shall be restricted to the appropriate areas of potential direct impact.

If no special-status plants are found during the focused survey, the botanist shall document the findings in a report to the Permittee and State Water Resources Control Board (State Water Board or Board), and no further mitigation will be required.

If special-status plants are found, a map detailing the locations of the plants shall be submitted to the Deputy Director for Water Rights prior to any ground-disturbing or vegetation-clearing activities and the following measures shall be implemented:

- a. Permittee shall not spray herbicides within 50 feet of the special-status plant population;
- b. Permittee shall not allow any land disturbance within 50 feet of the special-status plant population;
- c. Permittee shall permanently identify the plant population within the boundaries of the place of use by surrounding the site with flagged construction stakes to be spaced and maintained at a maximum distance of 30 feet apart;
- d. Permittee shall restrict cattle or other domestic stock access to the special-status plant populations within the boundaries of the place of use;
- e. Permittee shall prepare, or cause to be prepared, a long-term habitat conservation plan, in consultation with the California Department of Fish and Game (CDFG) and/or United States Fish and Wildlife Service (USFWS) if required, for the protection of the special-status plant population within the boundaries of the place of use. The plan shall be subject to review, modification,

and approval by the Deputy Director for Water Rights. Amendments to the said plan shall be prepared in consultation with CDFG and USFWS and a copy of any such amendments shall be submitted to the Deputy Director for Water Rights.

8. Permittee shall allow representatives of the Division of Water Rights reasonable access upon notification of the Permittee or the Permittee's agent for the purpose of verifying compliance with the conditions of the permits.
9. These permit terms shall remain in effect as long as water is being diverted by the Permittee (or successors-in-interest) under any permits or licenses issued pursuant to Applications 29686 and 29687.
10. Permittee shall adhere to the June 8, 2007, Compliance Plan for Flow Bypass (Compliance Plan) (NVVE 2007) approved by the Division of Water Rights and shall comply with the flow bypass term specified in this permit. Diversion and use of water prior to approval of the Compliance Plan and the installation of facilities specified in the Compliance Plan is not authorized. Permittee shall be responsible for all costs associated with installing and maintaining all flow bypass and monitoring facilities described in the Compliance Plan.

The monitoring data shall be maintained by Permittee for 10 years from the date of collection and made available to the Deputy Director for Water Rights upon request. Any non-compliance with the terms of the permit shall be reported in writing to the Deputy Director for Water Rights within 15 days of the violation.

11. Permittee shall establish a setback within 45 feet measured from the top of the bank of Pope Creek (within the Permittee's property), to minimize disturbance to potential aquatic, aestivation, and/or basking habitat for foothill yellow-legged frog, California red-legged frog, and western pond turtle. No ground disturbing activities shall occur within the setback area, including, but not limited to, grading, herbicide spraying, roads, fencing, and use or construction of storage areas, with the exception of occasional equipment access reasonably necessary for continued operation of the vineyard. Equipment access through the setback shall be limited to previously disturbed areas of the setback when possible and is only allowed when other means of access are not available. Equipment access through the setback area shall incorporate best management practices to minimize disturbance to water, soils, and vegetation. Planting and irrigation of native riparian vegetation within the setback area is allowed. Permittee shall restrict cattle or other domestic stock access to the riparian area. These requirements shall remain in effect as long as water is being diverted under this permit.
12. Permittee shall obtain the approval of the United States Fish and Wildlife Service, Sacramento Endangered Species Office, and California Department of Fish and Game prior to any future reservoir dredging operations. Permittee shall submit to the Deputy Director for Water Rights evidence of agencies' approval prior to any future reservoir dredging operations. Permittee shall refrain from disturbing emergent (wetland) vegetation in the reservoir during dredging operation.

13. If native oak trees 6 inches in diameter or larger, measured at diameter at breast height (DBH), are to be removed from the place of use, a qualified biologist approved by the Deputy Director for Water Rights shall prepare an Oak Tree Mitigation and Monitoring Plan for replacement of trees in undeveloped portions of the property at a 3:1 ratio. Potential planting areas for these trees include riparian corridors outside of protected buffer areas, areas adjacent to remaining patches of oak woodland and foothill pine forest, and ruderal grassland areas where appropriate. A planting plan shall be developed by a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, depicting the locations where the mitigation trees will be planted. The planting plan shall include planting specifications for replacement trees, irrigation methods, maintenance and monitoring requirements, and success criteria for mitigation plantings. The mitigation area(s) shall be monitored for a minimum duration of five years. Failed plantings shall be replaced to achieve net success criteria of 80 percent survival after five years. Annual reports shall be submitted to the Division of Water Rights beginning with the end of the first year after the mitigation area(s) have been established and continuing until mitigation requirements are completed. The mitigation requirement will be deemed complete at the end of five years if the success criteria have been met. Trees surviving five years shall be maintained in perpetuity. Photograph documentation showing the results of the tree replacement shall be submitted to the Deputy Director for Water Rights 30 days after the mitigation requirements have been completed. All photos shall be dated and the location of the photos shown on a drawing or map of the place of use.

Native oak trees to be retained or designated for retention shall be protected through the use of barricades or other appropriate methods during the construction phase. Native oak trees over 6 inches DBH to be removed shall be replaced with an equivalent kind, quality, and quantity at a ratio of 3:1.

14. If trees are to be removed between February 1 and September 30, a biologist, whose qualifications are acceptable to the Deputy Director for Water Rights, shall conduct a pre-construction survey for the purpose of identifying nesting bird species. The pre-construction survey shall include all potential nesting habitat within 500 feet of proposed construction areas. The survey shall be conducted no more than 14 days prior to the beginning of construction activities and a report of the findings shall be submitted to the Deputy Director for Water Rights prior to construction. If an active raptor or migratory bird nest is found during the pre-construction survey, the Permittee shall notify the California Department of Fish and Game. If an active raptor nest is found during the pre-construction survey, a 500-foot no-disturbance buffer shall be established and maintained around the nest until all young have fledged. If an active nest of any other migratory or non-migratory bird is found, a 250-foot buffer shall be established around the nest until all young have fledged.
15. If the place of use is determined to be within an erosion hazard area, then a discretionary permit is required from Napa County for removal of vegetation. Existing vegetation shall be retained to the extent feasible. If the place of use is not within an erosion hazard area, then no further mitigation is required as stipulated by Napa County regulations.

16. No work shall commence and no water shall be diverted, stored, or used under this permit until a copy of a Lake or Streambed Alteration Agreement between the California Department of Fish and Game (CDFG) and Permittee is filed with the Division of Water Rights. Compliance with the terms and conditions of the agreement is the responsibility of Permittee. If a Lake or Streambed Alteration Agreement is not necessary for this permitted project, Permittee shall provide the Division of Water Rights a copy of a waiver signed by CDFG.
17. For the protection of fish and wildlife, under all bases of right, Permittee shall during the period from November 1 of each year through May 15 of the succeeding year, bypass a minimum of 47.1 cubic feet per second at the point of diversion on Pope Creek. Under all bases of right, Permittee shall bypass the entire stream flow outside of the season of diversion.
18. No water shall be diverted under this permit except through a fish screen on the intake to the diversion structure, satisfactory to meet the physical and operational specifications of California Department of Fish and Game to protect fisheries resources. Construction, operation, and maintenance costs of the required facility are the responsibility of the Permittee.
19. Permittee shall not stock and shall not allow others to stock nonnative fish in the reservoir. Permittee shall monitor on a yearly basis the reservoir authorized under this permit, to make sure that no non-native fish, non-native frogs, or other exotic aquatic predators are accidentally introduced. Permittee shall eliminate any non-native fish or non-native frogs found by draining the reservoir where they were found and gigging non-native frogs found by hand. Permittee shall prepare annually a report describing the methodology used to survey the reservoir for the presence of exotic species, the dates when the surveys occurred, and what actions were taken if exotic species were found. These exotic species monitoring reports shall be submitted to the Division of Water Rights with the next required Report of Permittee, Report of Licensee or whenever requested by the staff of the Division of Water Rights. Permittee shall post signs in English and Spanish at the reservoir stating that the introduction of non-native fish and non-native frogs into the reservoir is prohibited.
20. Permittee shall not use more water under the basis of riparian right on the place of use authorized by this permit than Permittee would have used absent the appropriation authorized by this permit.

Based on the information in the Division's files, riparian water has not been used on the place of use. Therefore, consistent with this term, Permittee may not divert any additional riparian water for use on the place of use authorized by this permit under basis of riparian right. With the Deputy Director for Water Right's approval, this information may be updated, and Permittee may use water under basis of riparian right on the authorized place of use, provided that Permittee submits reliable evidence to the Deputy Director for Water Rights quantifying the amount of water that Permittee likely would have used under the basis of riparian right absent the appropriation authorized by this permit. The Deputy Director for Water Rights is hereby authorized to approve or

reject any proposal by Permittee to use water under the basis of riparian right on the place of use authorized by this permit.

21. Before the initiation of any ground-disturbing or vegetation-clearing activities, Permittee shall retain a qualified biologist, acceptable to the Deputy Director for Water Rights, to conduct a survey to determine if elderberry shrubs with stems greater than 1-inch diameter at ground level are present within 100 feet of the place of use. The findings of the survey shall be submitted in a report to the Deputy Director for Water Rights at least two weeks before project construction begins.

If no elderberry shrubs with stems greater than 1-inch diameter at ground level are found during the focused survey, the biologist shall document the findings in a letter report to the Permittee and State Water Board, and no further mitigation will be required.

If elderberry shrubs with stems greater than 1-inch diameter at ground level are present within 100 feet of the place of use, avoidance and minimization measures such as the installation of orange barrier fencing shall be implemented to ensure that a 100-foot buffer is maintained between construction areas and elderberry shrubs. Photographs of any elderberry shrubs with stems greater than 1-inch diameter at ground level should be included in the survey report.

22. The prehistoric site identified as the Metal Barn Site in the report titled, "A Cultural Resources Survey for Water Right Applications A29686 and A29687 (Narsai David) Pope Valley, Napa County, California" (Quinn and Origer 2001) shall not be included in the place of use and shall be fenced in order to eliminate current and future impacts and to preserve site integrity. An archeologist who has been approved by the California Historical Information System to work in the area, and who is acceptable to the Deputy Director for Water Rights, shall determine the boundaries of the sites and placement of permanent fencing. The archeologist shall be present during installation of the fencing to prevent any inadvertent damage to the site. The boundaries of the permanent fencing shall include a buffer zone of 15 feet at a minimum around the site. Permanent fencing, with a height of 5 feet at a minimum ensuring that it is clearly visible for heavy equipment operators, shall be installed prior to project-related activities and shall remain in place for as long as water is being diverted. Future developments at this site may be permitted only if a qualified archaeologist is retained by the Permittee to design and undertake investigations to determine site significance, and if necessary develop an appropriate mitigation plan, which must be approved by the Deputy Director for Water Rights.

23. Should any buried archeological materials be uncovered during project activities, such activities shall cease within 100 feet of the find. Prehistoric archeological indicators include: obsidian and chert flakes and chipped stone tools; bedrock outcrops and boulders with mortar cups; ground stone implements (grinding slabs, mortars, and pestles) and locally darkened midden soils containing some of the previously listed items plus fragments of bone and fire affected stones. Historic period site indicators generally include: fragments of glass, ceramic, and metal objects; milled and split lumber; and structure and feature remains such as building foundations, privy pits, wells

and dumps; and old trails. The Deputy Director for Water Rights shall be notified of the discovery and a professional archeologist shall be retained by Permittee to evaluate the find and recommend appropriate mitigation measures. Proposed mitigation measures shall be submitted to the Deputy Director for Water Rights for approval. Project-related activities shall not resume within 100 feet of the find until all approved mitigation measures have been completed to the satisfaction of the Deputy Director for Water Rights.

24. If human remains are encountered, Permittee shall comply with Section 1564.5(e)(1) of the CEQA Guidelines and the Health and Safety Code Section 7050.5. All project-related ground disturbance within 100 feet of the find shall be halted until the county coroner has been notified. If the coroner determines that the remains are Native American, the coroner will notify the Native American Heritage Commission to identify the most-likely descendants of the deceased Native Americans. Project-related ground disturbance in the vicinity of the find shall not resume until the process detailed under Section 15064.5 (e) has been completed and evidence of completion has been submitted to the Deputy Director for Water Rights.
25. In order to control and minimize potential erosion during construction activities, Best Management Practices (BMP) shall be prepared by a licensed civil engineer and submitted to and approved by the Deputy Director for Water Rights, prior to starting construction. BMPs for controlling erosion may include, but are not limited to the following: vegetation removal shall be limited to the minimum amount necessary to accommodate installation of the diversion facility; temporary erosion control measures, such as silt fences, staked straw bales, and temporary revegetation, shall be installed in disturbed areas; and sediment shall be retained on-site by sediment basins, traps, siltation barriers, or other appropriate measures as needed.
26. No debris, soil, silt, cement that has not set, oil, or other such foreign substance will be allowed to enter into or be placed where it may be washed by rainfall runoff into the waters of the State. When operations are completed, any excess materials or debris shall be removed from the work area.
27. Permittee shall obtain all necessary state and local agency permits required by other agencies prior to construction and diversion of water. Copies of such permits and approvals shall be forwarded to the Deputy Director for Water Rights.
28. The State Water Board reserves jurisdiction to impose conditions to conform this permit to Board policy on use of water for frost protection. Action by the Board will be taken only after notice to interested parties and opportunity for hearing.
29. This permit is subject to the continuing authority of the State Water Board to reduce the amount of water named in the permit upon a finding by the Board that the amount is in excess of that reasonably needed to be held in storage for the authorized use. No action will be taken by the Board without prior notice to the owner and an opportunity for hearing.

30. To prevent degradation of the quality of water during and after construction of the project, Permittee shall file a report of waste discharge pursuant to Water Code Section 13260 prior to commencement of construction and shall comply with all waste discharge requirements imposed by the California Regional Water Quality Control Board, Central Valley Region, or by the State Water Board.
31. Prior to diversion of use of water under this permit, Permittee shall install an in-line flow meter, satisfactory to the Deputy Director for Water Rights, to measure the instantaneous rate and the cumulative amount of water withdrawn from Pope Creek on the diversion pump discharge pipe. In-line flow meters shall be installed on the irrigation and frost protection pumps discharge lines. Evidence that the required measuring devices have been installed shall be submitted to the Deputy Director for Water Rights prior to diversion of water.
32. No water shall be diverted under this permit until the Permittee has installed a device in Pope Creek, satisfactory to the State Water Board, which is capable of measuring the bypass flow required by the conditions of this permit. The device and the location of the monitoring station shall be reviewed and must be satisfactory to the Deputy Director for Water Rights, before any construction is undertaken. Permittee shall furnish evidence which substantiates that the streamflow measuring device has been installed, prior to diversion of water under this permit. If the measuring device is rendered inoperative for any reason, all diversions shall cease until such time as the device is restored to service. Said measuring device shall be properly calibrated, operated, and maintained by the Permittee (or successors-in-interest) as long as any water is being diverted under any permits or licenses issued pursuant to Applications 29696 and 29687.
33. Before storing any water in the reservoir, Permittee shall install a staff gauge in the reservoir, satisfactory to the Deputy Director for Water Rights, for the purpose of determining water levels in the reservoir. This staff gauge must be maintained in operating condition as long as water is being diverted under this permit.

Permittee shall record the staff gauge readings on the last day of each month and on December 15 annually. Permittee shall record the maximum and minimum water surface elevations and the dates on which these water levels are measured each water-year between October 1 and September 30. Permittee shall maintain a record of all staff gauge readings and shall submit these records with annual progress reports, and whenever requested by the Division.

Specific Permit Term for Application 29687:

34. The capacity of the reservoir covered under this permit shall not exceed 87 acre-feet.

Specific Permit Terms for Application 29686:

35. The maximum rate of diversion to offstream storage shall not exceed 2 cubic feet per second.

Contact Person: Greg Brown	Telephone: (916) 323-1847 email: gbrown@waterboards.ca.gov
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APPROVAL OF THE ABOVE IS RECOMMENDED BY:

Gregory Brown,
Environmental Scientist

Date

Katherine Mrowka, Chief
Inland Streams Unit

Date

Phillip Crader, Acting Manager
Water Rights Permitting Section

Date

APPROVED:

Barbara Evoy, Deputy Director
Division of Water Rights

Date